

## The complaint

Ms J complains that Creation Consumer Finance Ltd didn't provide her with the information she needed to prevent interest being charged on her purchase and then unlawfully took a payment from her account. She says that the credit agreement contained onerous terms that weren't brought to her attention.

## What happened

On 4 August 2020, Ms J took out a 0% interest loan when buying an item from a retailer. She says she was told she had a year to make the payment for the item and if she did this no interest would be charged. Ms J asked the retailer for a copy of the agreement terms and conditions but was told it didn't provide these and she could print them from the website.

Ms J says she didn't receive any communication about her agreement except for a letter in February 2021 stating that there was a further three-month extension available to people who were impacted by the pandemic. She says the letter didn't state when she needed to repay the loan and the only dates on the letter were in the top corner stating 'End of BNPL: 4/08/21 First Payment Date 04 Sept 2021'. She says she didn't know what BNPL meant and assumed the payment deadline was 4 September 2021. Ms J says she paid the full cost of the item on 25 August 2021 thinking this was in time to avoid any interest. However, a further payment of £102.84 was then taken from her account by direct debit. She contacted Creation to ask for this money back, but Creation refused and demanded more interest from her.

Ms J says the credit agreement terms were onerous and at no time were they brought to her attention. She noted that Creation said she had online statements, but she hadn't accessed her online account. Ms J says that at least one letter should have been sent by post to remind her of the payment deadline and terms of the repayment.

Creation issued a final response dated 21 June 2023. It said that the retail staff were trained to offer a copy of the credit agreement at the point of sale and that if Ms J chose not to take this, she would have been told she could view and download this through her online account manager. It said that the item Ms J bought had a Special Offer Date (SOD) of 4 August 2021 and she would need to make payment by this date to avoid interest being charged. It said her June and July 2021 statements reflected the SOD expiry date. As Ms J didn't make the payment by the SOD expiry date it said interest had been charged in line with the agreement terms and conditions. It noted that it received notification from Ms J's bank in September 2021 to say her direct debit had been cancelled and that as of the date of the letter her account was in arrears.

Our investigator didn't uphold this complaint. He noted that Ms J said she was told when she purchased the item that there would be no interest to pay if she repaid the amount due within 12 months. As the item was bought on 4 August 2020 this meant repayment was due by 4 August 2021. As Ms J didn't pay the amount due until later in August the interest was charged. He noted Ms J's comment about not receiving the terms and conditions but said Ms J was guided to these being online and had agreed to them.

Our investigator said that Creation had posted Ms J's account statements online and these set out that the SOD came to an end on 4 August 2021. He said Ms J had a direct debit set up and a payment was taken in September 2021, but this wasn't all of the interest due and a balance of £290.71 remained. As Ms J cancelled her direct debit Creation wasn't then able to take any further payments and as the payments weren't made, he didn't think that Creation was wrong to record adverse information on Ms J's credit file.

Ms J didn't agree with our investigator's view. She said that although she knew that she had 12 months to make her repayment when she bought the item it wasn't reasonable to expect her to remember this date and she should have been contacted by Creation about this. Ms J said that she wasn't provided with a copy of the agreement or its terms and conditions despite requesting this and that she was told that Creation would be in touch, but this didn't happen. She noted that she didn't receive any notification from Creation about registering for the online portal until 3 June 2021 and after doing this she received an email dated 21 July 2021 advising her to log on to the online portal and confirming her payment amount of £1,580.57 and the due payment date of 4 September 2021. She said she relied on this information and made the full payment before the 4 September 2021 payment date. Ms J explained she had the money available and had she been told payment was required before 4 August 2021 or interest would be added then she would have made the payment at that time.

Ms J said the payment taken by Creation on 4 September 2021 was for unlawful interest and while she raised a complaint at the time she wasn't contacted until April 2023 when Creation was trying to claim further interest and charges. Ms J said that Creation unfairly applied adverse information to her credit file and because of the damage to her credit rating she paid what she considered to be unlawful interest and charges of £520.03 on 9 September 2023.

Ms J referred to several pieces of legislation. She said that Creation was required to communicate with her in a plain and intelligible language and that communication must be clear, comprehensive and non-misleading. She said the email she received on 21 July 2021 was misleading and based on this she made the payment on the date she believed would result in no interest being charged. She said she hadn't been provided with her account statements by email.

Ms J wanted Creation to remove the negative markers from her credit file, refund the interest and late fees of £520.03 and compensate her for her time spent dealing with this issue.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Ms J has referred to several pieces of legislation in her response to our investigator's view. I would like to confirm that when considering a complaint, while I take all relevant rules and regulations into account my decision is based on what I consider fair and reasonable given the unique circumstances of the complaint. While I may not have commented on each individual point Ms J has raised, I can assure her that I have taken all the evidence provided in this complaint into account and my reasoning below focuses on the key points that have led to my decision.

Ms J raised a previous complaint with Creation about her missing the SOD and interest being applied. Creation issued a final response letter dated 27 August 2021 in which it confirmed the SOD of 4 August 2021 and said that two statements had been made available online reminding her of this date. It said that as payment was not made by the SOD, interest became due.

In 2023, Ms J raised a further complaint with Creation about not receiving a reminder to make her payment and not being provided with a copy of the credit agreement. She said the terms and conditions of the credit agreement were unenforceable and the arrears incorrect. Creation responded to these complaint points in its final response letter dated 21 June 2023 and Ms J referred her complaint to this service in July 2023. It is these complaint points that I have considered in this decision.

Ms J bought an item on 4 August 2020. She has explained that she was offered interest free finance. It isn't my role to say whether an agreement is enforceable but to consider whether Creation has done anything wrong in its dealings with Ms J and whether Ms J has been treated fairly. In this case, as Ms J signed the credit agreement it is reasonable to accept that she agreed to its terms.

Ms J said that she asked for a copy of the terms and conditions when she bought the item and while she said in response to our investigator's view that she was told Creation would contact her, in her initial complaint she said she was told by the retailer to go online and print the terms and conditions. As Ms J signed the agreement with the retailer, I find it reasonable to accept she was happy with this approach to accessing the terms and conditions. Had she done this and decided she no longer wanted the agreement she could have exercised her right to withdraw.

Ms J has said that when she entered the agreement, she was told that she would have 12 months interest free. Her complaint is that she wasn't then contacted by Creation after entering the agreement, to give her notice of the payment date and that interest would be charged if payment wasn't made before 4 August 2021. She said it wasn't reasonable to expect her to remember the SOD a year on without any contact or reminders. She further states that the correspondence she did receive (a letter in February regarding extensions for those struggling due to the pandemic) and an email dated 21 July 2021, following her online registration suggested that she needed to make her payment by 4 September 2021, to prevent the interest being charged. She says had she been made aware the payment was due by 4 August 2021 and the consequences of not making this she would have made the payment at that time.

Ms J made the full payment for the item in August 2021 and Creation has confirmed receipt of the full payment on 27 August. Given this, and her testimony, I find it reasonable to accept that she thought she had made the payment within the interest free period. But, while I appreciate this maybe what Ms J believed to be the case, I have to consider whether she had been made reasonably aware that the payment was due by 4 August 2021.

In this case, I find that Creation did make available sufficient information for Ms J. This is because Ms J was told at inception that the interest free period was 12 months. Had she forgotten when the 12-month period ended then she could have contacted Creation about this. While I note Ms J said she should have been emailed her account statements, Creation's system notes refer to the statement setting delivery method as 'WEB'. I understand that Ms J may not have realised she had statements available in the first months of the agreement and I note her comment that she did not receive any emails from Creation notifying her to register on to the online portal and to view the account statements until 3 June 2021. But, at this point I think it would have been reasonable for Ms J to register online and access her account.

Ms J said she registered to the online portal and was sent an email on 21 July 2021. I have looked at this and it said that her latest statement dated 14 July 2021 was available to view online. Based on the information provided, I find it reasonable to accept that Ms J was made aware of how to access her account statements and as she had registered in July 2021, she was able to do this. Had Ms J accessed her statements she would have found that her June

and July 2021 statements referred to the purchase she had made on 4 August 2020 and clearly state the SOD end date as 4 August 2021. The statements then include a section explaining the Buy Now Pay Later (BNPL) period and providing warning when this is close to expiry. The statements include the payments due to be made should the full payment not be made before the end of the BNPL period.

Ms J said that the limited information she did receive from Creation misled her into believing she had until 4 September to make the payment. She has said that a letter received in February 2021 had in the right hand corner the information 'End of BNPL 04/08/21 First payment date 4 Sept 2021'. Ms J said that she didn't know what BNPL referred to, but I think it reasonable that had this been the case she would have contacted Creation to understand the date or looked online for the account terms and conditions. Ms J has also referred to the email she received dated 21 July 2021. This states that the payment due date is when the first direct debit will be due. It then says that the details of the BNPL end date were provided at purchase and are available in the online account. Based on this I find that Creation was clear about what the September payment date was for and where to find details of the BNPL end date had Ms J not been aware of when this was.

In conclusion, I find that Ms J was provided with the information she needed to know that the full payment needed to be made by 4 August 2021 to prevent interest being added to her account.

Ms J also complained about the payment taken on 4 September 2021. I appreciate she believed this was for unlawfully applied interest but as I do not find that Creation did anything wrong, or treated Ms J unfairly by applying the interest, I do not find I can say it was wrong to take the payment due under the direct debit given the balance outstanding on the account.

Ms J then cancelled her direct debit which resulted in her account going into arrears. I note she says she didn't receive any letters about this until 2023. Creation has explained that because Ms J made a payment of £1,580.27 on 27 August 2021 and a further payment of £102.84 on 6 September 2021, a total of £1,683.11 was received which put her account into credit and satisfied the contractual monthly amounts due until March 2023. As no payment was received in April 2023, the account went into arrears and so at that point letters were issued to Ms J and information was recorded on her credit file. Given there was a period when the account wasn't in arrears, I do not find it unreasonable that notifications weren't provided at that time. Once the account went into arrears Ms J was notified of this and I do not find I can say Creation did anything wrong by doing this or informing the credit reference agencies of the status of the account at that time. Ms J settled the account in full on 12 September 2023.

So, while I understand that Ms J is upset by the experience she has had, I do not find that Creation did anything wrong in this case or that it treated Ms J unfairly.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms J to accept or reject my decision before 11 March 2024.

Jane Archer  
**Ombudsman**